IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 22036 of 2004(W)

PETITIONER:

K.SUBRAMANIAN, S/O.T.S.KRISHNA IYER,
RESIDING AT NEW STREET, NURANI,
PIRAYIRI AMSOM, PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA

RESPONDENT:

R.LAKSHMANAN, S/O.A.L.RAMASWAMY,
RESIDING AT NJOUNHIPADAM, PUTHUR AMSOM,
PALAKKAD TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.22036/2004

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF ORDER IN I.A.2091/02 IN INDIGENT O.P.173/02 ON THE FILE OF THE DISTRICT COURT, PALAKKAD DT.3.3.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C) No.22036 OF 2004

.....

DATED THIS THE 24TH MAY, 2007

J U D G M E N T

Ext.P1 order of the District Judge, Palakkad by which the respondent has been permitted to institute an appeal as an indigent person is under challenge.

2. Even though the respondent has been served with notice, he has not entered appearance before this Court to resist the Writ Petition. Heard the submissions of Sri.V.Chitambaresh, learned counsel for the petitioner.

3. The court-fee payable on the appeal is Rs.4660/-. Under the judgment which was appealed against, the trial court directed refund of the advance amount of Rs.40,000/- which had been paid by the petitioner to the respondent on account of an agreement for sale of property. In the enquiry which was conducted by the court below regarding the ability of the respondent to pay court-fee, the respondent got himself examined as PW.1 and stated that his monthly income was only Rs.1000/-. He admitted that he is having a telephone connection and the monthly bill comes at an average to

Rs.400/- to Rs.500/-. The petitioner did not adduce any counter oral evidence. Instead, Ext.X1 document which is copy of loan application submitted by the respondent before the Palakkad Service Co-operative Bank was summoned. The court below has noticed that in the enquiry report which was submitted before the Palakkad Service Co-operative Bank by the representative of the Bank who conducted an enquiry in connection with Ext.X1 loan application, it was reported that the respondent is having a monthly income of Rs.8000/-. But, according to the court below, the said enquiry report cannot be legal evidence to hold that the monthly income of the respondent is Rs.8000/-. The learned Judge referred to the judgments of this Court in **Pathumma v. K.S.E.B.** (1997 (2) KLT 227) and **Unnikrishnan v. Rugmini** (1995 (2) KLT Sh.Notes Case No.80, page 59), followed the abstract legal principles laid down in those decisions and held that it has not been established that the respondent is having the capacity to raise the money necessary for paying the court-fee. The court below also found that since the only item of property belonging to the respondent stood mortgaged to the Palakkad Service Co-operative Bank, the respondent cannot be expected to sell that property immediately for the purpose of raising the fund.

4. As already indicated, the court-fee commitment for the appeal is less than Rs.5000/-. It is admitted by PW.1 that he was having cotton business. His case is that presently he is not having that business but is only functioning as a broker and is getting a monthly income of Rs.1000/- only. Mr.Chitambaresh would give thrust to the enquiry report which was obtained by the Palakkad Service Co-operative Bank in connection with Ext.X1 application. He would also submit that a person who had been maintaining a telephone for more than seven years and had been admittedly doing cotton business cannot be found to be unable to pay the requisite court-fee, which is only less than Rs.5000/- in this case. The enquiry report referred to in the order is obviously on the basis of the claims of the respondent. Having taken advantage of the said report for availing loan, he cannot be permitted now to contend that what was already reported is wrong.

5. I find that the petitioner did not adduce any counter-evidence and that the respondent was not confronted with the enquiry report during his cross-examination. Mr.Chitambaresh's submission that the respondent's version regarding his ability to raise funds and his income is not inspiring has some force. The respondent even tried to get away from his admitted case regarding monthly income. Respondent's

version that telephone bills are being paid by his son and regarding stoppage of cotton business is not supported by documentary evidence. I feel that the petitioner should be permitted to let in counter-evidence and also to recall PW.1 and confront him with the enquiry report which is appended to Ext.X1.

6. Ext.P1 order is set aside. The matter will go back to the District Judge who will take a fresh decision in the light of the observations made hereinabove. Fresh decision will be taken at the earliest and at any rate within three months of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

tgl